

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-3052-00
SDTille

date:

to: District Director, Manhattan District
Examination Division
Attn: [REDACTED], Case Manager, Group [REDACTED]
[REDACTED], Team Coordinator

from: District Counsel, Manhattan District, New York

subject:

[REDACTED]
EIN: [REDACTED]
Tax Years: [REDACTED] [REDACTED] [REDACTED]
Form 872 Restrictive Language
Statute of Limitations expires [REDACTED]
Uniform Issue List # 6501.08-17

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to the taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This advice is subject to 10 day post review by the National Office. Accordingly, we request that you do not act on this advice until we inform you of the National Office's comments, if any, about this advice.

Issue

Whether District Counsel approves the restrictive language contained in paragraph (3) of the attached Form 872 for [REDACTED]

(" [REDACTED] ").

Conclusion

The restrictive language used in paragraph (3) of the attached Form 872 for [REDACTED] is approved.

Facts and Discussion

The Service requested the approval of District Counsel regarding the restrictive language in paragraph (3) of the attached Form 872 for [REDACTED]. The restrictive language in paragraph (3) of the Form 872 states:

The amount on any deficiency assessment is to be limited to that amount of tax resulting from any adjustment to removal costs deductions including any consequential changes to other items based on such adjustments but not limited to depreciation and amortization deductions.

The removal cost deductions referred to in paragraph (3) of the Form 872 pertain to whether the taxpayer properly deducted in taxable years [REDACTED], [REDACTED] and [REDACTED] the costs of removing asbestos and making wire replacements on its facilities. There are no additions to tax related to this issue and no other outstanding issues under examination for the taxable years [REDACTED], [REDACTED] and [REDACTED].

The Service only requested advice concerning the restrictive language and not any other aspect of the Form 872. The statute of limitations for assessment for the taxable years [REDACTED], [REDACTED] and [REDACTED] expires on [REDACTED].

The Internal Revenue Manual, Sub-Subsection 4541.72 states that extreme care should be taken in writing restrictive language in a consent. The restriction should not foreclose utilization of alternative rationales in making the adjustment if such action becomes necessary. The restrictive language should describe the area of consideration rather than the proposed tax treatment. Code sections should not be included in the restrictive language. Each restricted consent must contain a basic restrictive statement and a description of the area of consideration. The

basic restrictive statement is as follows:

The amount of any deficiency assessment is to be limited to that resulting from any adjustment to (description of the area of consideration) including any consequential changes to other items based on such adjustment.

The Service and the taxpayer have agreed to the proposed restrictive language contained in paragraph (3) of the Form 872 and the proposed restrictive language is in compliance with the manual. Accordingly, the restrictive language contained in paragraph (3) of the attached Form 872 is approved.

This advice is rendered on the basis that all representations and facts in this memorandum are correct. If any of the representations or facts are incorrect or cannot be substantiated, our advice may need to be modified.

If you have any questions regarding this memorandum, contact Attorney Steven Tillem at (212) 264-5473 extension 255.

LINDA R. DETTERY
District Counsel

By: _____
THEODORE R. LEIGHTON
Assistant District Counsel

Attachments

Noted:

Linda R. Dettery
District Counsel

CC: Paulette Segal
Assistant Regional Counsel (LC) (via e-mail)

Mary Helen Weber
Assistant Regional Counsel (LC) (via e-mail)

Michael P. Corrado
Assistant Regional Counsel (TL) (via e-mail)

Peter J. LaBelle
Assistant District Counsel (via e-mail)